

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**P.S. PRODUCTS, INC. and
BILLY PENNINGTON, Individually**

PLAINTIFFS

V.

Case No. 4:13-cv-342-KGB

**ACTIVISION BLIZZARD, INC.,
ACTIVISION PUBLISHING, INC., and
TREYARCH CORPORATION**

DEFENDANTS

DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(B)(6)

Defendants Activision Blizzard, Inc., Activision Publishing, Inc., and Treyarch Corporation (“Defendants”) respectfully move for dismissal of Plaintiffs P.S. Products, Inc. and Billy Pennington’s (“Plaintiffs”) complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and state the following grounds:

1. Plaintiffs allege that Defendants have infringed U.S. Patent No. D561,294, which covers an ornamental design of a stun gun.
2. Plaintiffs have failed to state a claim because they cannot meet the necessary test to prove design patent infringement as a matter of law.
3. Defendants support this motion with a contemporaneously filed memorandum brief.
4. WHEREFORE, Defendants Activision Blizzard, Inc., Activision Publishing, Inc., and Treyarch Corporation respectfully request that the Court dismiss Plaintiffs P.S. Products, Inc. and Billy Pennington’s complaint with prejudice, along with all other proper relief.

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CERTIFICATE OF SERVICE

On July 18, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which served a copy on the following through notice of electronic filing:

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